

22 December 1997

Re: NEPA Technical Inquiry 0206 - Lease Acquisition in Zone AE

Dear NEPA Call-In User:

This letter is in response to your December 1, 1997 request for NEPA Call-In to provide guidance on interpreting a Federal Emergency Management Agency (FEMA) Elevation Certificate to determine if a potential lease acquisition site is in a 100-year flood zone. The Elevation Certificate states the building in question is in an AE flood zone, but also states the lowest grade adjacent to the building is 1.4 feet (ft) above the Base Flood Elevation (BFE). The offeror of the space stated since the lowest grade adjacent to the building is above the BFE, the site must be considered by GSA because it is not in a 100-year flood zone. You would like to know if GSA is required to consider the site based on information in the Elevation Certificate stating the site is actually above the BFE. You provided NEPA Call-In with a copy of the FEMA Elevation Certificate for review.

SUMMARY OF FINDINGS

The information on the Elevation Certificate indicates that although the lowest grade adjacent to the building is 1.4 ft above the BFE, the building site is still located within property designated as zone AE, which is the 100-year floodplain based on detailed hydraulic studies of the area. Therefore, the building owner is still required to purchase flood hazard insurance. The following factors should be considered before GSA awards a lease for space in a building with such a designation: 1) The date of the Flood Insurance Rate Map (FIRM) used for the actual elevations, 2) the possibility of the BFE changing over time, and 3) whether this potential action is consistent with the intent of Executive Order (EO) 11988, "Floodplain Management", May 24, 1977. NEPA does not require GSA to consider all potential sites. However, the EO states GSA should not select a site in the floodplain unless it is the only practicable alternative.

DETAILED FINDINGS

NEPA Call-In first reviewed the FEMA Elevation Certificate for the site to verify the BFE, National Flood Insurance Program (NFIP) flood zone designation, and elevation of the lowest grade adjacent to the building. We determined the site in question is within zone AE, which is the 100-year floodplain based on detailed hydraulic studies of the area. We also determined from the Elevation Certificate that there is a 1.4 ft margin between the lowest grade adjacent to the structure and the BFE. Although the building site is elevated above the BFE by 1.4 ft, it has the potential to become an isolated island during the 100-year flood event because the site is located within zone AE.

We then contacted the NFIP Customer Service Center, (800) 638-6620, to inquire about the use of an Elevation Certificate. The representative we spoke with stated the Elevation Certificate is a requirement of local community flood insurance plans as mandated by the NFIP and is used mainly as a tool to determine insurance rates. The representative also stated a building located within a flood zone, but which has the lowest floor above the BFE as verified by the Elevation Certificate, might receive a lower insurance rate. However, the building would not be

exempt from the mandatory purchase of flood hazard insurance due to its location within the flood zone.

NEPA Call-In then reviewed information related to the FIRM which was used for preparing the Elevation Certificate. The FIRM was revised September 4, 1987. Although the 1987 FIRM is the latest information available on the site, it may not represent the most accurate hydrologic conditions at the site today. Development in the watershed may have taken place over the past 10 years since the FIRM was revised. As development in a watershed increases, the BFEs tend to rise due to a decrease in stormwater percolation into the subsurface, resulting in increased amounts of water channeled toward the floodplain. If the BFE of the site has increased over the past 10 years since the FIRM was last revised, then the 1.4 ft margin separating the BFE from the lowest grade adjacent to the building may have decreased.

NEPA Call-In also reviewed EO 11988, "Floodplain Management," May 24, 1977. The first paragraph states the intent of the Order is "to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative..." Although neither NEPA nor EO 11988 requires GSA to consider all potential sites, GSA would need to make a determination that a site within the floodplain was the only practicable alternative before it could acquire the site.

NEPA Call-In then reviewed GSA ADM 1095.2, "Consideration of flood plains in decisionmaking." Chapter 2, Section 5, states:

"The GSA acquisition and site selection processes shall preclude the acquisition of public buildings through Federal construction, purchase, or lease within:

- a) Base flood plains and wetlands,
- b) Areas in which the action would adversely impact or indirectly support development of the base flood plain or wetland, and
- c) Critical action flood plains, if the proposed use is considered a critical action."

The section further states that "GSA shall not acquire, by purchase or lease, space or buildings within areas [listed in items (a) through (c) above]." If it is determined the site in question is not in the base floodplain and an offer is made to lease the building, then GSA may wish to consider whether acquisition of such a site would lead to direct or indirect impacts on the floodplain or whether GSA would directly or indirectly be supporting additional floodplain development.

The materials in this TI have been prepared for use by GSA employees and contractors and are made available at this site only to permit the general public to learn more about NEPA. The information is not intended to constitute legal advice or substitute for obtaining legal advice from an attorney licensed in your state and may or may not reflect the most current legal developments. Readers should also be aware that this response is based upon laws, regulations, and policies in place at the time it was prepared and that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(Original Signed)

NEPA Call-In Researcher